

DATE: 8/14/2023
TIME: 3:57 PM

APPEARANCE DOCKET

1:23cv720
Judge Dan Aaron Polster**FILED**

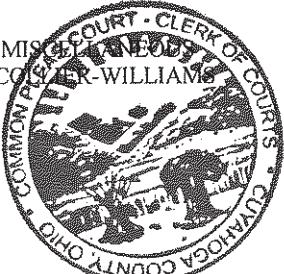
Case No: CV-23-977128

MARCELLUS GILREATH
VS

Filing Date: 03/27/2023

PAMELA MCGUINEA, ET AL

AUG 22 2023

CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELANDFiling Cd:1350 TO CT-MISC L AEO
Judge:CASSANDRA COLLIER-WILLIAMSPrior Judge:
Magistrate:
Panel Chair:Status:I
Jury Req:Y
Class:
Prayer Amt:

The State of Ohio }
 Cuyahoga County }
 { The Clerk of the Court
 Of Common Pleas of Ohio
 And for said County

Hereby certify that the above and foregoing is truly
 taken and copied from the original _____

Now on file in my office
 Witness my hand and seal of said Court this _____
 Day of _____ A.D. 20_____
 CUYAHOGA COUNTY CLERK OF COURTS
 By _____ Deputy

Name: SOC ARCHIVE FILES
 Date: 07/05/2023

Disposition:
 NEWLY FILED
 DISP. TRANSCT
 RE-INSTATED
 DISP. OTHER

Date:
 03/27/2023
 04/11/2023
 08/06/2023
 08/14/2023

Next Action:
 Date/Time:

File Location

P 1	GILREATH, MARCELLUS C/O SPEECH LAW LLC 1265 WEST SIXTH STREET SUITE 400 CLEVELAND, OH 44113	Service:	0098423	BARDWELL/BRIAN/ 1265 W. 6TH ST. SUITE 400 CLEVELAND, OH 44113-0000	(216) 912-2195
D 1	MCGUINEA, PAMELA 1641 PAYNE AVENUE CLEVELAND, OH 44114	Service:	0082257	STEWART/MICHAEL/J THE JUSTICE CENTER, COURTS TOWER 1200 ONTARIO STREET, 8TH FLOOR CLEVELAND, OH 44113	
D 2	CUYAHOGA COUNTY 1200 ONTARIO STREET 9TH FLOOR CLEVELAND, OH 44113	Service: 03/30/2023 CUYAHOGA COUNTY	SUMS COMPLAINT 0082257	CERTIFIED MAIL 04/03/2023 STEWART/MICHAEL/J THE JUSTICE CENTER, COURTS TOWER 1200 ONTARIO STREET, 8TH FLOOR CLEVELAND, OH 44113	COMPLETED
		Service: 03/30/2023 CUYAHOGA COUNTY	SUMS COMPLAINT 0082257	CERTIFIED MAIL 03/31/2023 STEWART/MICHAEL/J THE JUSTICE CENTER, COURTS TOWER 1200 ONTARIO STREET, 8TH FLOOR CLEVELAND, OH 44113	COMPLETED

Type	- Docket - Code	Party	Date	Description	Cost Amount
SF	INIT		3/27/2023	CASE FILED: COMPLAINT	
SF	CSPF	P 1	3/27/2023	COURT SPECIAL PROJECTS FUND	50.00
SF	LA	P 1	3/27/2023	LEGAL AID	26.00
SF	LR	P 1	3/27/2023	LEGAL RESEARCH	3.00
SF	CF	P 1	3/27/2023	CLERK'S FEE	25.00
SF	RECT	P 1	3/27/2023	DEPOSIT AMOUNT PAID BRIAN BARDWELL	250.00
SF	245		3/27/2023	JUDGE CASSANDRA COLLIER-WILLIAMS ASSIGNED (RANDOM)	
SF	LN	P 1	3/27/2023	LEGAL NEWS	10.00

DATE: 8/14/2023
 TIME: 3:57 PM
 CASE: CV-23-977128

APPEARANCE DOCKET

SF	CM	P 1	3/27/2023	COMPUTER FEE	20.00
MO	MOT	P 1	3/27/2023	MOTION FILED FOR P1 MARCELLUS GILREATH BRIAN BARDWELL 0098423 MOTION FOR ORDER CORRECTING DOCKET ENTRY 04/23/2023 - UNKNOWN	
SR	COPY		3/28/2023	SUMMONS E-FILE COPY COST	1.00
CS	WRIS	D 1	3/28/2023	WRIT FEE	2.00
CS	WRIS	D 2	3/28/2023	WRIT FEE	2.00
SR	COPY		3/28/2023	SUMMONS E-FILE COPY COST	1.00
SR	CRTM	D 1	3/29/2023	SUMS COMPLAINT(50228134) SENT BY CERTIFIED MAIL. TO: PAMELA MCGUINEA 1641 PAYNE AVENUE CLEVELAND, OH 44114	7.57
SR	CRTM	D 2	3/29/2023	SUMS COMPLAINT(50228135) SENT BY CERTIFIED MAIL. TO: CUYAHOGA COUNTY 1200 ONTARIO STREET 9TH FLOOR CLEVELAND, OH 44113	7.57
SR	UPCP		4/05/2023	USPS RECEIPT NO. 50228135 DELIVERED BY USPS 03/31/2023 CUYAHOGA COUNTY PROCESSED BY COC 04/05/2023.	
NT	REMO	D 2	4/07/2023	NOTICE OF REMOVAL FILED NOTICE OF FILING OF NOTICE OF REMOVAL TO FEDERAL COURT	
JE	JE		4/11/2023	PURSUANT TO THE NOTICE OF REMOVAL (TITLE 28 U.S. CODE 1441, ET SEQ.) (FILED 04/07/2023), THE CAPTIONED CASE IS TRANSFERRED TO THE UNITED STATES DISTRICT COURT (CASE NO. 1:23-CV-720) AND THIS COURT SHALL PROCEED NO FURTHER UNLESS AND UNTIL THE CASE IS REMANDED.	8.00
				SO ORDERED.	
				COURT COST ASSESSED TO THE PLAINTIFF(S). PURSUANT TO CIV.R. 58(B), THE CLERK OF COURTS IS DIRECTED TO SERVE THIS JUDGMENT IN A MANNER PRESCRIBED BY CIV.R. 5(B). THE CLERK MUST INDICATE ON THE DOCKET THE NAMES AND ADDRESSES OF ALL PARTIES, THE METHOD OF SERVICE, AND THE COSTS ASSOCIATED WITH THIS SERVICE. NOTICE ISSUED	
SR	JEAO	P 1	4/11/2023	JUDGMENT ENTRY(50344417) SENT BY EMAIL. TO: BRIAN BARDWELL EFILE@SPEECH.LAW	
SR	JEAO	D 2	4/11/2023	JUDGMENT ENTRY(50344416) SENT BY EMAIL. TO: MICHAEL J STEWART MJSTEWART@PROSECUTOR.CUYAHOGACOUNTY.US	
SR	UPCP		4/12/2023	USPS RECEIPT NO. 50228134	

DATE: 8/14/2023
 TIME: 3:57 PM
 CASE: CV-23-977128

APPEARANCE DOCKET

			DELIVERED BY USPS 04/03/2023 MCGUINEA/PAMELA/ PROCESSED BY COC 04/12/2023.	
SR	JEAO	D 1	4/13/2023 JUDGMENT ENTRY(50344418) SENT BY REGULAR MAIL SERVICE. TO: PAMELA MCGUINEA 1641 PAYNE AVENUE CLEVELAND, OH 44114	2.00
CS	RFND	NP1	4/13/2023 REFUND BALANCE OF CASE COST DEPOSIT TO BRIAN BARDWELL	76.33
SR	CRTM	NPI	4/14/2023 CERTIFIED MAILER(50357834) SENT BY CERTIFIED MAIL. TO: UNITED STATES DISTRICT COURT 801 WEST SUPERIOR AVENUE CLEVELAND, OH 44113-0000	8.53
SR	UPCP		4/19/2023 USPS RECEIPT NO. 50357834 DELIVERED BY USPS 04/14/2023 UNITED STATES DISTRICT COURT PROCESSED BY COC 04/19/2023.	
OT	FREM		5/26/2023 CORRESPONDENCE RECEIVED STATING CASE REMANDED BACK TO THE CUYAHOGA COUNTY COURT OF COMMON PLEAS FROM U.S. DISTRICT COURT. FEDERAL COURT CASE NO. 1:23CV720,DOC#6 - CUYAHOGA COUNTY COMMON PLEAS COURT CASE NO. CV-23-977128.	
BR	BIO	D	6/01/2023 BRIEF IN OPPOSITION FILED BY DEFENDANT(S) PAMELA MCGUINEA(D1) and CUYAHOGA COUNTY(D2) MICHAEL J STEWART 0082257 RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR NUNC PRO TUNC ORDER CORRECTING DOCKET ENTRY	
JE	JE		6/30/2023 PLAINTIFF MARCELLUS GILREATH'S MOTION FOR ORDER CORRECTING DOCKET ENTRY, FILED ON 03/27/2023, IS GRANTED. PLAINTIFF'S COMPLAINT IS DEEMED FILED ON 03/24/2023. THE CLERK OF COURTS IS HEREBY ORDERED TO SEND A COPY OF THIS ORDER TO THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF OHIO OFFICE OF THE CLERK.	8.00
			SO ORDERED. NOTICE ISSUED	
SR	JEAO	NP1	7/05/2023 JUDGMENT ENTRY(51008464) SENT BY REGULAR MAIL SERVICE. TO: UNITED STATES DISTRICT COURT 801 WEST SUPERIOR AVENUE CLEVELAND, OH 44113-0000	2.00
JE	JE		8/06/2023 CAPTIONED CASE BEING REMANDED TO THE COURT OF COMMON PLEAS BY ORDER OF THE UNITED STATES DISTRICT COURT; THIS MATTER IS HEREBY RETURNED TO THE DOCKET OF JUDGE CASSANDRA COLLIER-WILLIAMS (365) FOR FURTHER PROCEEDINGS ACCORDING TO LAW.	10.00
			ADMINISTRATIVE JUDGE BRENDAN J. SHEEHAN NOTICE ISSUED	
SR	JEAO	D 1	8/14/2023 JUDGMENT ENTRY(51379599) SENT BY EMAIL. U10.3	

DATE: 8/14/2023
TIME: 3:57 PM
CASE: CV-23-977128

APPEARANCE DOCKET

TO:
MICHAEL J STEWART
MJSTEWART@PROSECUTOR.CUYAHOGACOUNTY.US

SR	JEAO	P 1	8/14/2023	JUDGMENT ENTRY(51379601) SENT BY EMAIL. TO: BRIAN BARDWELL EFILE@SPEECH.LAW	
JE	JE		8/14/2023	THIS COURT HAVING RULED ON PLAINTIFF MARCELLUS GILREATH'S MOTION FOR ORDER CORRECTING DOCKET ENTRY ON 06/30/2023, THE CAPTIONED CASE IS TRANSFERRED BACK TO THE UNITED STATES DISTRICT COURT (CASE NO. 1:23-CV-720) AND THIS COURT SHALL PROCEED NO FURTHER UNLESS AND UNTIL THE CASE IS REMANDED.	10.00
SR	JEAO	D 1	8/14/2023	SO ORDERED. PURSUANT TO CIV.R. 58(B), THE CLERK OF COURTS IS DIRECTED TO SERVE THIS JUDGMENT IN A MANNER PRESCRIBED BY CIV.R. 5(B). THE CLERK MUST INDICATE ON THE DOCKET THE NAMES AND ADDRESSES OF ALL PARTIES, THE METHOD OF SERVICE, AND THE COSTS ASSOCIATED WITH THIS SERVICE. NOTICE ISSUED	
SR	JEAO	D 1	8/14/2023	JUDGMENT ENTRY(51379600) SENT BY EMAIL. TO: MICHAEL J STEWART CCPOINTAKE@PROSECUTOR.CUYAHOGACOUNTY.US	



155290460

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

MARCELLUS GILREATH
Plaintiff

Case No: CV-23-977128

Judge: CASSANDRA COLLIER-WILLIAMS

PAMELA MCGUINEA, ET AL
Defendant

JOURNAL ENTRY

96 DISP.OTHER - FINAL

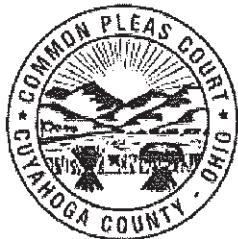
THIS COURT HAVING RULED ON PLAINTIFF MARCELLUS GILREATH'S MOTION FOR ORDER CORRECTING DOCKET ENTRY ON 06/30/2023, THE CAPTIONED CASE IS TRANSFERRED BACK TO THE UNITED STATES DISTRICT COURT (CASE NO. 1:23-CV-720) AND THIS COURT SHALL PROCEED NO FURTHER UNLESS AND UNTIL THE CASE IS REMANDED.

SO ORDERED.

PURSUANT TO CIV.R. 5(B), THE CLERK OF COURTS IS DIRECTED TO SERVE THIS JUDGMENT IN A MANNER PRESCRIBED BY CIV.R. 5(B). THE CLERK MUST INDICATE ON THE DOCKET THE NAMES AND ADDRESSES OF ALL PARTIES, THE METHOD OF SERVICE, AND THE COSTS ASSOCIATED WITH THIS SERVICE.

Judge Signature

08/14/2023



NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
1200 Ontario Street
Cleveland, Ohio 44113

Court of Common Pleas

New Case Electronically Filed: COMPLAINT
March 27, 2023 14:55

By: BRIAN BARDWELL 0098423

Confirmation Nbr. 2812867

MARCELLUS GILREATH

CV 23 977128

vs.

PAMELA MCGUINEA, ET AL

Judge: CASSANDRA COLLIER-WILLIAMS

Pages Filed: 9

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

MARCELLUS GILREATH

c/o Speech Law LLC
1265 West Sixth Street, Suite 400
Cleveland, OH 44113

Plaintiff,

v.

PAMELA MCGUINEA

1641 Payne Avenue
Cleveland, OH 44114
and

CUYAHOGA COUNTY

1200 Ontario Street, 9th Floor
Cleveland, Ohio 44113

Defendants.

Case No.:

COMPLAINT (JURY DEMAND ENDORSED HEREON)

This is an action to vindicate the violation of Dr. Marcellus Gilreath's civil rights arising from a malicious prosecution resulting in his wrongful conviction.

PARTIES

1. Dr. Marcellus Gilreath is a disabled veteran, a former captain in the U.S. Army Medical Corps, and a resident of the State of Ohio.
2. Defendant Pamela McGuinea is a public official and investigator for Cuyahoga Job and Family Services.
3. Defendant Cuyahoga County is a political subdivision of the State of Ohio.

JURISDICTION & VENUE

4. This Court has jurisdiction under Article IV, Section 2 of the Ohio Constitution.

5. The Court has personal jurisdiction over Defendants, who are located, work, or reside in Cuyahoga County.
6. Venue is proper because the events giving rise to Dr. Gilreath's claims took place in Cuyahoga County.

FACTS

7. Dr. Gilreath was a doctor in the United States Army Medical Corps.
8. As a result of service-connected disabilities, Dr. Gilreath collects benefits from both the United States Veterans Administration and Cuyahoga Job and Family Services.
9. In August 2011, the United States Veterans Administration approved an increase in Dr. Gilreath's benefits.
10. By rule, the increase in Dr. Gilreath's VA benefits triggered a decrease in the benefits to which Dr. Gilreath was entitled from Cuyahoga Job and Family Services.
11. Because he believed the County was aware of the change in his VA benefits, Dr. Gilreath continued to accept the benefits Cuyahoga Job and Family Services extended to him.
12. Some time after the change in VA benefits, Defendant McGuinea, an investigator for Cuyahoga Job and Family Services, told law-enforcement officials that her office had never been alerted to the change in Dr. Gilreath's VA benefits and that it had therefore paid him approximately \$6,000 in benefits to which he was not entitled.
13. Based on Defendant McGuinea's report, the Office of the Cuyahoga County Prosecutor obtained an indictment against Dr. Gilreath.
14. Cuyahoga County prosecutors typically pursue misdemeanor charges for theft of benefits at such low dollar amounts.

15. But in Dr. Gilreath's case, they sought and obtained an indictment on felony charges of grand theft and illegal use of food stamps, and they refused to reduce the charges to a misdemeanor in exchange for a guilty plea.
16. Instead, prosecutors insisted that Dr. Gilreath enter a guilty plea to a felony count of attempted grand theft or stand trial on the original charges.
17. Dr. Gilreath did not know how or why Cuyahoga Job and Family Services was unaware that the VA had increased his benefits.
18. After consulting with his defense counsel, Dr. Gilreath believed he had failed to properly alert the County to the change and that his best option was to accept the prosecutors' offer.
19. Dr. Gilreath did not know that in truth, Defendant McGuinea had known about the change in his VA benefits almost immediately after it was approved.
20. Dr. Gilreath did not know that in truth, the County was in possession of paperwork proving that it was timely notified of that change in his VA benefits.
21. Dr. Gilreath did not know that in truth, the County had relied on that document to fully and properly adjust his benefits.
22. Dr. Gilreath did not know that in truth, he had therefore never actually received any benefits to which he was not entitled.
23. Dr. Gilreath did not know these facts because the County never produced that document to him in the course of prosecuting him.
24. The County had a duty to produce that document under *Brady v. Maryland*, 373 U.S. 83 (1963).

25. Dr. Gilreath would not have pleaded guilty if he had known the County was in possession of a document proving his innocence.
26. Without the benefit of that document, Dr. Gilreath accepted the plea bargain, which he saw as his least-worst option.
27. The court convicted Dr. Gilreath, placed him on probation and ordered him to repay \$5,711 in restitution for the allegedly stolen funds.
28. Dr. Gilreath made that payment on January 29, 2013.

Prosecutor Michael O'Malley admits Dr. Gilreath was wrongly convicted.

29. On January 27, 2021, the Prosecutor's Office sent Dr. Gilreath a letter informing him that its Conviction Integrity Unit had reviewed his conviction.
30. The Prosecutor's Office had learned that contrary to Defendant McGuinea's report, the County had known about the change in Dr. Gilreath's VA benefits all along and correctly adjusted for it upon learning of it.
31. Jamie Gregorski, an investigator for Cuyahoga Job and Family Services, determined that the 2012 charges against Dr. Gilreath were "unfounded" and should never have been referred to the Prosecutor's Office in the first place.
32. On February 8, 2021, Prosecutor O'Malley moved to vacate Dr. Gilreath's conviction.
33. The court granted that motion on March 25, 2021.

Dr. Gilreath suffered injuries as a result of Defendants' misconduct.

34. Because of Defendants' conduct, Dr. Gilreath suffered damages. For example:
 - a. Dr. Gilreath was forced to pay restitution that he never owed.
 - b. Dr. Gilreath was unable to find work because of his conviction.
 - c. Dr. Gilreath was barred from participating in the food-stamp program.

- d. Dr. Gilreath suffered reputational injury, humiliation, mental anguish and other emotional damages.
- 35. As a direct and proximate result of Defendants' actions, Dr. Gilreath has suffered and continues to suffer economic and non-economic damages for which Defendants are liable.
- 36. Defendants' acts were willful, egregious, malicious, and worthy of substantial sanction to punish and deter them and others from engaging in this type of unlawful conduct.

Dr. Gilreath's injuries were the result of governmental policy.

- 37. Dr. Gilreath's prosecution was not merely the result of a single employee gone rogue. Rather, it was the result of County policies or customs made by employees whose edicts or acts represent official policy.
- 38. Dr. Gilreath's referral for prosecution was approved not only by Defendant McGuinea but by management at Cuyahoga Job and Family Services, which constituted a ratification of that referral.
- 39. Likewise, the decision to charge Dr. Gilreath was the result of the County's deliberate indifference to his rights and its failure to adequately train and supervise its employees on the protection of those rights.

CLAIM 1

**CIVIL ACTION FOR DEPRIVATION OF RIGHTS: 42 U.S.C. § 1983
MALICIOUS PROSECUTION**

- 40. Plaintiff re-incorporates all the preceding allegations.
- 41. Defendants initiated a criminal prosecution against Dr. Gilreath.
- 42. Defendants made, influenced, or participated in the decision to prosecute Dr. Gilreath.
- 43. There was a lack of probable cause for the criminal prosecution.
- 44. As a consequence of the legal proceeding, Dr. Gilreath suffered a deprivation of liberty.

45. The criminal proceeding was resolved in Dr. Gilreath's favor when the court vacated his conviction.

CLAIM 2

CIVIL ACTION FOR DEPRIVATION OF RIGHTS: 42 U.S.C. § 1983

ABUSE OF PROCESS

46. Plaintiff re-incorporates all the preceding allegations.

47. In the alternative, Defendants set a legal proceeding in motion with probable cause by initiating criminal charges against Dr. Gilreath.

48. Defendants perverted that proceeding to accomplish an ulterior purpose for which the proceeding was not designed—including but not limited to the purpose to harass and oppress Dr. Gilreath.

CLAIM 3

CIVIL ACTION FOR DEPRIVATION OF RIGHTS: 42 U.S.C. § 1983

BRADY VIOLATION

49. Plaintiff re-incorporates all the preceding allegations.

50. Defendants were in possession of exculpatory evidence in Dr. Gilreath's criminal prosecution.

51. Defendants suppressed that evidence.

52. Had that evidence been disclosed to the defense, there is a reasonable probability that the result of the proceeding would have been different.

CLAIM 4

INTIMIDATION (OHIO REV. CODE § 2921.03)

53. Plaintiff re-incorporates all the preceding allegations.

54. Under Ohio Rev. Code § 2921.03, “[n]o person, knowingly and by force, by unlawful threat of harm to any person or property, or by filing, recording, or otherwise using a materially false or fraudulent writing with malicious purpose, in bad faith, or in a wanton or reckless manner, shall attempt to influence, intimidate, or hinder a public servant, a

party official, or an attorney or witness involved in a civil action or proceeding in the discharge of the person's the duties of the public servant, party official, attorney, or witness.”

55. Defendant McGuinea knowingly used a materially false or fraudulent writing with malice, bad faith, wantonness, or recklessness, in an attempt to influence the public servants in the prosecutor's office, court, and grand jury in the discharge of their duties.

**CLAIM 5
FALSIFICATION**

56. Plaintiff re-incorporates all the preceding allegations.

57. Under Ohio Rev. Code § 2921.13, “[n]o person shall knowingly make a false statement, or knowingly swear or affirm the truth of a false statement previously made ... in any official proceeding [or] with purpose to mislead a public official in performing the public official's official function.”

58. Defendant McGuinea knowingly made false statements to prosecutors and a grand jury during an official proceeding with purpose to mislead them in performing their official functions.

**CLAIM 6
INTERFERENCE WITH CIVIL RIGHTS**

59. Plaintiff re-incorporates all the preceding allegations.

60. Under Ohio Rev. Code § 2921.45, “[n]o public servant, under color of the public servant's office, employment, or authority, shall knowingly deprive, or conspire or attempt to deprive any person of a constitutional or statutory right.”

61. Dr. Gilreath had a constitutional right to due process and a fair trial.

62. In particular, Dr. Gilreath had a right to receive any exculpatory information in the possession of the state to ensure his guilty plea was made knowingly, intelligently, and voluntarily.
63. Defendants violated those rights by filing a false report of theft, by falsifying evidence related to that report, and by withholding exculpatory evidence related to that report.

PRAYER FOR RELIEF

Dr. Gilreath therefore respectfully requests the following relief:

- A. Enter judgment in Plaintiff's favor on all claims for relief;
- B. Declare that Defendants' acts and conduct constitute violations of the United States and Ohio Constitutions, and of Ohio Rev. Code §§ 2921.03, 2921.13, and 2921.45.
- C. Award injunctive relief barring further violations of Dr. Gilreath's rights;
- D. Declare that Defendants are liable for damages on all claims brought against them;
- E. Award full compensatory damages of more than \$25,000, including, but not limited to, damages for pain and suffering, mental anguish, and emotional distress that Plaintiffs have suffered and are reasonably certain to suffer in the future;
- F. Award punitive and exemplary damages for Defendants' egregious, willful, and malicious conduct;
- G. Award pre- and post-judgment interest at the highest lawful rate;
- H. Award reasonable attorneys' fees and all other available costs of suit; and
- I. Award all other relief in law or equity that the Court deems equitable, just, and proper.

JURY DEMAND

Dr. Gilreath demands a trial by jury on all issues within this complaint.

Respectfully submitted,

/s/Brian D. Bardwell

Brian D. Bardwell (0098423)

Speech Law, LLC

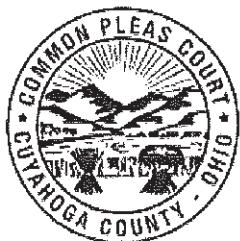
1265 West Sixth Street, Suite 400

Cleveland, OH 44113-1326

216-912-2195 Phone/Fax

brian.bardwell@speech.law

Attorney for Plaintiff Marcellus Gilreath



NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
1200 Ontario Street
Cleveland, Ohio 44113

Court of Common Pleas

MOTION TO...
March 27, 2023 19:28

By: BRIAN BARDWELL 0098423

Confirmation Nbr. 2813252

MARCELLUS GILREATH

CV 23 977128

vs.

PAMELA MCGUINEA, ET AL

Judge: CASSANDRA COLLIER-WILLIAMS

Pages Filed: 8

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

MARCELLUS GILREATH

Plaintiff,

v.

PAMELA MCGUINEA, et al.

Defendants.

Case No.: CV-23-977128

Judge Cassandra Collier-Williams

**PLAINTIFF MARCELLUS GILREATH'S MOTION
FOR ORDER CORRECTING DOCKET ENTRY**

Plaintiff Marcellus Gilreath respectfully moves the Court for an order correcting the docket to reflect that the Complaint was filed with the Cuyahoga County Clerk of Courts on March 24, 2023.

FACTS

Plaintiff Marcellus Gilreath is a disabled former doctor in the U.S. Army Medical Corps who was wrongfully convicted of attempted grand theft because he lawfully applied for and obtained food stamps. Years after his conviction, prosecutors admitted their error and had his conviction vacated.

Dr. Gilreath filed a malicious-prosecution complaint on March 24, 2023, using the Cuyahoga County Clerk of Courts' e-filing system. The morning of March 27, 2023, the e-filing system rejected his filing because he had not submitted an affidavit of poverty. But although Dr. Gilreath was eligible for a court-appointed attorney in his criminal case years ago, he did not need or want a fee waiver for his filing in this case. Counsel for Dr. Gilreath met with the deputy clerks on the e-filing desk the next business day to determine what had happened, and they were able to process the filing again on the spot.

However, the clerk's office said that technical limitations in its e-filing system made it impossible for them to apply the correct timestamp to the complaint, which now shows that it was filed on March 27, 2023.

LAW & ARGUMENT

I. Because the Clerk's office erroneously rejected Dr. Gilreath's complaint, the Court should deem it filed as of the date it arrived in the Clerk's office.

When technical problems delay the docketing of an electronically filed pleading, the court may enter an order deeming the pleading filed as of the date it was electronically submitted. Loc.R. 39.0(H)(1)–(2). This authority includes the authority to correct the docket to reflect the actual filing date of a complaint, as “[i]t is always preferred that cases be decided on their merits rather than on technicalities.” *Covarrubias v. Lowe's Home Improvement, L.L.C.* 172 N.E.3d 516, ¶ 32 (8th Dist. 2021).

For instance, in *Covarrubias*, the Plaintiff filed a complaint in a personal-injury suit on the evening of the last day before reaching his statute of limitations, but the clerk of courts—for reasons unknown—initially failed to process it or timestamp it until the next business day. Although the Plaintiff moved to correct the docket to reflect that the Complaint was filed the day prior, the Court dismissed the case on statute-of-limitations grounds, holding that Loc.R. 39.0(H)(3)(a) prohibited it from correcting the filing date to meet a “jurisdictional deadline.” The Eighth District reversed, holding that because statutes of limitations are affirmative defenses—not jurisdictional requirements—the trial court was required to correct the docket.

Given the mandate to use an e-filing system where everyone conceded “glitches have occurred,” the Eighth District said the trial court could not penalize a party who fell victim to one of those glitches:

Whether or not it was accepted by the clerk was entirely out of appellant's counsel's hands, and there is no assertion that there was any reason the complaint

would not have been accepted. Given that appellant's counsel had uploaded the complaint, selected the credit card to pay the filing fee, and hit "submit" prior to 5:00 p.m., which was well within the electronic filing deadline of 11:59 p.m., it was reasonable for him to assume that the filing was in the queue to be processed and that he would receive confirmation of the filing the next day.¹

The same is true here. As laid out in Exhibit A, counsel for Dr. Gilreath signed into the clerk's e-filing portal at 9:11 p.m., entered the required information, uploaded the complaint, and hit "submit" at 9:16 p.m. At no point did the system request or require that he submit a poverty affidavit; on the contrary, it required that he enter his credit-card information, just as it has in every other case where he has not sought a fee waiver. Because the complaint was filed before 11:59 p.m. but after hours, the system did not send out a notification that the filing had been accepted or rejected. Still, an error in the system triggered a rejection of the complaint for failing to attach a fee waiver that the system never requested nor required. As required by rule, counsel for Dr. Gilreath therefore ensured that the complaint was refiled the next business day. He spoke with multiple deputy clerks to sort out the error, and after they pushed the filing through the system again, they were able to resolve the error without any further effort. Because the complaint was already in the clerk's system, Dr. Gilreath's counsel was not required to upload it again, and there were therefore no changes to it whatsoever.

CONCLUSION

"Cases should be decided on their merits, rather than upon procedural niceties and technicalities." *Perotti v. Ferguson*, 7 Ohio St. 3d 1, 4, (1983) (Brown, J., concurring). To achieve that end here, Loc.R. 39.0 permits the Court to correct the docket as necessary to account for e-filing "glitches." Because doing so will permit an adjudication on the merits and would not

¹ Covarrubias, ¶ 27.

unfairly prejudice any party, the Court should enter an order correcting the docket to reflect that Dr. Gilreath filed his complaint at 9:16 p.m. on March 24, 2023.

Respectfully submitted,

/s/Brian D. Bardwell

Speech Law LLC

Brian D. Bardwell (0098423)

1265 West Sixth Street, Suite 400

Cleveland, OH 44113-1326

216-912-2195 Phone/Fax

brian.bardwell@speech.law

Attorney for Plaintiff Marcellus Gilreath

CERTIFICATE OF SERVICE

I certify that on March 27, 2023, this document was served on opposing counsel as provided by Civ.R. 5(B)(2)(c).

/s/Brian D. Bardwell

Brian D. Bardwell (0098423)

Attorney for Plaintiff Marcellus Gilreath

Affidavit of Brian D. Bardwell

I, Brian D. Bardwell, having been duly sworn, state as follows:

1. I am over the age of 18 and competent to testify to the facts below based on personal knowledge.
2. I am counsel to Plaintiff Marcellus Gilreath.
3. On March 24, 2023 at 9:11 p.m., I signed in to the Cuyahoga County Clerk of Courts's e-file system.
4. Once in that system, I opened up a file for Dr. Gilreath. I entered the names and addresses of the parties, I uploaded a PDF of the Dr. Gilreath's complaint, and I entered my credit-card information to pay any fees associated with opening the case.
5. After doing that, I hit the "Submit E-File For Approval" button at 9:16 p.m.
6. The e-file system then gave me the following "Filing Confirmation," saying that my "filing has been submitted":

FILING CONFIRMATION

Your filing has been submitted. Below is a summary of this transaction you may [Print] or copy for your records.

File ID: 2811695
Date/Time Submitted: 3/24/2023 9:16:39 PM

Court: CIVIL
Type of Filing: TORT-MISCELLANEOUS
Filing Attorney: BARDWELL/BRIAN/
Plaintiff Title: Marcellus Gilreath
Defendant Title: Pamela McGuiness
Number Foreign: 0
Public Notice: N
Poverty Affidavit: Y
Refiled/Transferred Case: N
Prayer Amount: 0
Jury Demand: Y

IF THE DOCUMENT(S) IS ACCEPTED FOR FILING, THE DATE AND TIME REFLECTED ABOVE SHALL SERVE AS THE DATE AND TIME OF FILING. UNLESS THE DOCUMENT(S) WAS SUBMITTED FOR FILING AFTER 11:59 P.M. ON A FRIDAY OR AFTER 11:59 P.M. ON A BUSINESS DAY BEFORE A COURT HOLIDAY IN THAT CASE, THE DOCUMENT WILL BE DEEMED FILED ON THE FOLLOWING COURT BUSINESS DAY.

7. At no point did the system ever request or require that I file a poverty affidavit for Dr. Gilreath.
8. The next business day, I saw that the clerk's office had not timestamped my filing. Until then, I had had no indication that there were any issues with the filing.
9. I went to the clerk's office to sort out the issue and ensure that the Complaint was properly filed.

PLAINTIFF'S
EXHIBIT

A

10. A deputy clerk told me she had rejected the filing because there was no poverty affidavit attached.
11. I explained that Dr. Gilreath because was not seeking a fee waiver.
12. The deputy indicated that her system showed that Dr. Gilreath was going to file a poverty affidavit.
13. When I explained that Dr. Gilreath would not be filing a poverty affidavit because he was not seeking a fee waiver, the deputy told me to resubmit the filing, but she said the e-filing system's technical limitations would not permit her to timestamp the complaint with the date when it was actually filed now that she had rejected it. The deputy indicated that such a correction could only happen by motion to the Court.
14. While at the clerk's office, I attempted to resubmit the filing. When I did, I saw that the system's "Poverty Affidavit" option was switched to "Yes." I switched it back to "No" and resubmitted the filing.
15. When the deputy opened the filing on her computer, the system inexplicably showed that "Poverty Affidavit" was nonetheless still switched to "Yes." Because there was no poverty affidavit attached, the deputy rejected the filing again.
16. The deputy again walked me through the process. Again, we switched the "Poverty Affidavit" option to "No." This time, the system recognized that no poverty affidavit was requested.
17. The deputy was finally able to push the filing through the system.
18. At no point during this process did I make any changes to the information about the case that I entered into the system. When the system finally recognized that Dr. Gilreath was not requesting a poverty affidavit, it did so without any changes to the other information I had entered about the case, and all that information remained identical across the various attempts at filing the complaint.
19. At no point during this process did I make any changes to the complaint. The clerk's system downloaded its copy of the complaint on March 24 and retained it. When the system finally recognized that Dr. Gilreath was not requesting a poverty affidavit, it used the same file that had been in its system since March 24, and I was never required to upload it after the first time on March 24.

I declare the preceding facts to be true under penalty of perjury.

Brian D. Bardwell

STATE OF OHIO)
COUNTY OF CUYAHOGA)
) SS.

Sworn to and subscribed before me on

Notary Public, State of Ohio

My commission expires: _____

I declare the preceding facts to be true under penalty of perjury.

Brian E. Bardwell

STATE OF OHIO

COUNTY OF CUYAHOGA

)
SS.
)

Sworn to and subscribed before me on 3/27/23.

Notary Public, State of Ohio

My commission expires: 6/27/23

ALLISON SAWI

THE COURT OF COMMON PLEAS, CIVIL DIVISION
CUYAHOGA COUNTY, OHIO

Clerk of Courts | The Justice Center | 1200 Ontario Street 1st Floor, Cleveland, Ohio 44113

MARCELLUS GILREATH

Plaintiff

CASE NO. CV23977128

JUDGE CASSANDRA COLLIER-WILLIAM

v.

PAMELA MCGUINEA, ET AL

Defendant

SUMMONS

SUMC CM

Notice ID: 50228135



From: MARCELLUS GILREATH
1265 WEST SIXTH STREET
SUITE 400
CLEVELAND OH 44113

P1

Atty.: BRIAN BARDWELL
1265 W. 6TH ST.
SUITE 400
CLEVELAND, OH 44113-0000

To: CUYAHOGA COUNTY
1200 ONTARIO STREET
9TH FLOOR
CLEVELAND OH 44113

D2

NOTICE TO THE DEFENDANT:

The Plaintiff has filed a lawsuit against you in this Court. You are named as a defendant. A copy of the **Complaint** is attached.

If you wish to respond to the Complaint, you must deliver a written **Answer** to the Plaintiff's attorney (or the Plaintiff if not represented by an attorney) at the above address *within 28 days* after receiving this Summons (not counting the day you received it). A letter or a phone call will not protect you. Civil Rule 5 explains the ways that you may deliver the **Answer** (<http://www.supremecourt.ohio.gov/LegalResources/Rules/civil/CivilProcedure.pdf>)

You must also file a copy of your **Answer** with this Court *within 3 days after* you serve it on the Plaintiff. You can file your **Answer** with the Clerk of Courts by one of the following methods: 1) In-person or by mail at the above address or 2) electronically through the online e-Filing system. For more information on using the e-Filing system, visit <http://coc.cuyahogacounty.us/en-US/efiling.aspx>.

If you fail to serve *and file* your **Answer**, you will lose valuable rights. The Court will decide the case in favor of the Plaintiff and grant the relief requested in the **Complaint** by entering a default judgment against you.

You may wish to hire an attorney to represent you. Because this is a civil lawsuit, the Court cannot appoint an attorney for you. If you need help finding a lawyer, contact a local bar association and request assistance.



Nailah K. Byrd
Clerk of Court of Common Pleas
216-443-7950

Carrie L. Neeley

Date Sent: 03/28/2023

By _____
Deputy

CMSN130

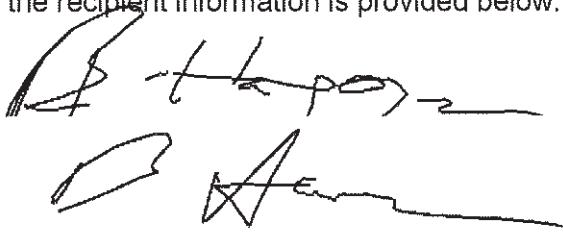


Date Produced: 04/03/2023

CERTIFIED MAIL SOLUTIONS INC.:

The following is the delivery information for Certified Mail™/RRE item number 9314 8001 1300 3548 0780 38. Our records indicate that this item was delivered on 03/31/2023 at 01:53 p.m. in CLEVELAND, OH 44113. The scanned image of the recipient information is provided below.

Signature of Recipient:



Two handwritten signatures are shown. The top signature appears to read "B. Harper" and the bottom one "B. Jan".

Address of Recipient:



1200 Ontario

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,
United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

THE COURT OF COMMON PLEAS, CIVIL DIVISION
CUYAHOGA COUNTY, OHIO

Clerk of Courts | The Justice Center | 1200 Ontario Street 1st Floor, Cleveland, Ohio 44113

MARCELLUS GILREATH

Plaintiff

CASE NO. CV23977128

JUDGE CASSANDRA COLLIER-WILLIAM

v.

PAMELA MCGUINEA, ET AL

Defendant

SUMMONS SUMC CM

Notice ID: 50228134



From: MARCELLUS GILREATH
1265 WEST SIXTH STREET
SUITE 400
CLEVELAND OH 44113

P1

Atty.: BRIAN BARDWELL
1265 W. 6TH ST.
SUITE 400
CLEVELAND, OH 44113-0000

To: PAMELA MCGUINEA
1641 PAYNE AVENUE
CLEVELAND OH 44114

D1

NOTICE TO THE DEFENDANT:

The Plaintiff has filed a lawsuit against you in this Court. You are named as a defendant. A copy of the **Complaint** is attached.

If you wish to respond to the Complaint, you must deliver a written **Answer** to the Plaintiff's attorney (or the Plaintiff if not represented by an attorney) at the above address *within 28 days* after receiving this Summons (not counting the day you received it). A letter or a phone call will not protect you. Civil Rule 5 explains the ways that you may deliver the **Answer** (<http://www.supremecourt.ohio.gov/LegalResources/Rules/civil/CivilProcedure.pdf>)

You must also file a copy of your **Answer** with this Court *within 3 days* after you serve it on the Plaintiff. You can file your **Answer** with the Clerk of Courts by one of the following methods: 1) In-person or by mail at the above address or 2) electronically through the online e-Filing system. For more information on using the e-Filing system, visit <http://coc.cuyahogacounty.us/en-US/efiling.aspx>.

If you fail to serve *and* file your **Answer**, you will lose valuable rights. The Court will decide the case in favor of the Plaintiff and grant the relief requested in the **Complaint** by entering a default judgment against you.

You may wish to hire an attorney to represent you. Because this is a civil lawsuit, the Court cannot appoint an attorney for you. If you need help finding a lawyer, contact a local bar association and request assistance.



Nailah K. Byrd
Clerk of Court of Common Pleas
216-443-7950

(e, b, R, R, R, R)

Date Sent: 03/28/2023

By _____ Deputy _____

CMSN130



Date Produced: 04/10/2023

CERTIFIED MAIL SOLUTIONS INC.:

The following is the delivery information for Certified Mail™/RRE item number 9314 8001 1300 3548 0780 14. Our records indicate that this item was delivered on 04/03/2023 at 07:49 a.m. in CLEVELAND, OH 44101. The scanned image of the recipient information is provided below.

Signature of Recipient:

Signature	Bernice Tucker	
X		
Mailed Name	MAR 03 2023	

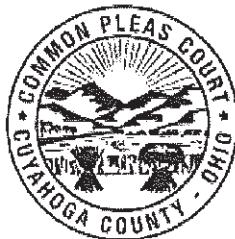
Address of Recipient:

Delivery address	CC Mail Room
------------------	--------------

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,
United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.



NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
1200 Ontario Street
Cleveland, Ohio 44113

Court of Common Pleas

NOTICE OF REMOVAL
April 7, 2023 10:53

By: MICHAEL J. STEWART 0082257

Confirmation Nbr. 2824112

MARCELLUS GILREATH

CV 23 977128

vs.

PAMELA MCGUINEA, ET AL

Judge: CASSANDRA COLLIER-WILLIAMS

Pages Filed: 6

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

)
MARCELLUS GILREATH,) CASE NO: CV-23-977128
)
Plaintiff,)
)
vs.) JUDGE CASSANDRA COLLIER-
PAMELA MCGUINEA, et al.,) WILLIAMS
)
Defendants.)
)
)

NOTICE OF FILING NOTICE OF REMOVAL TO FEDERAL COURT

Pursuant to 28 U.S.C. § 1446(d), Defendants give notice that the Defendants filed a *Notice of Removal* in the United States District Court for the Northern District of Ohio, Eastern Division, on April 7, 2023. A copy of the *Notice of Removal* in Northern District case number 1:23-cv-720 is attached as Exhibit A (not including its exhibits, which are comprised of documents filed in this Court). Please take further notice that under 28 U.S.C. § 1441, the filing of the Notice of Removal in the District Court, together with the filing of this Notice, effects the removal of this action from this Court.

Respectfully submitted,

MICHAEL C. O'MALLEY, Prosecuting Attorney of
Cuyahoga County, Ohio

By: /s/ Michael J. Stewart

Michael J. Stewart (0082257)

Jake A. Elliott (0093521)

CUYAHOGA COUNTY PROSECUTOR'S OFFICE
The Justice Center, Courts Tower
1200 Ontario Street, 8th Floor

Cleveland, OH 44113
Phone: (216) 443-5756
Fax: (216) 443-7602
mjstewart@prosecutor.cuyahogacounty.us
jelliott@prosecutor.cuyahogacounty.us

CERTIFICATE OF SERVICE

A copy of the foregoing Notice of Filing Notice of Removal was filed via the Court's electronic filing system on April 7, 2023. All parties may access this filing via the Court's electronic filing system.

By: /s/ Michael J. Stewart
Michael J. Stewart (0082257)

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

MARCELLUS GILREATH,) CASE NO.:
Plaintiff,)
vs.) JUDGE:
PAMELA MCGUINEA, et al.)
Defendants.)

NOTICE OF REMOVAL

Defendants Cuyahoga County, Ohio seeks removal of this action pursuant to 28 U.S.C. § 1441 *et seq.* and state as follows:

1. On March 27, 2023, Plaintiff Marcellus Gilreath commenced a civil action against the Defendants in the Cuyahoga County Court of Common Pleas, Case No. CV 23-977128. A copy of the Complaint is attached as Exhibit 1.
2. Plaintiff alleges that the County and Defendant violated various rights arising under the United State Constitution and federal statutory law. See, generally: Claim 1 of Complaint (Malicious Prosecution, 42 U.S.C. § 1983); Claim 2 (Abuse of Process, 42 U.S.C. § 1983);; and Claim 3 (*Brady* violation, 42 U.S.C. § 1983).

3. Each of the claims enumerated in the preceding paragraph “aris(es) under the Constitution, law or treaties of the United States” within the meaning of 28 U.S.C. § 1331.

4. This Court possesses original jurisdiction over the federal claims in this civil action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3). The remaining state-law claims are joined to this single action and are removable, at minimum, pursuant to 28 U.S.C. § 1441(c). In the alternative, this Court possesses supplemental jurisdiction over some of Plaintiff’s state-law claims pursuant to 28 U.S.C. § 1337.

5. From the face of the state-court docket, Co-Defendant Pamela McGuinea has yet been served with process. Moreover, Ms. McGuinea is a former employee of Defendant Cuyahoga County. Plaintiff has directed the state-court clerk to serve Ms. McGuinea at her former place of employment. Such service does not comply with Fed.R.Civ.P. 4 or Ohio law concerning service of process.

6. This Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b) in that it is filed within thirty (30) days of the Cuyahoga County’s receipt of the Summons and Complaint.

7. In accordance with 28 U.S.C. § 1446(d), Defendants will give notice to the Cuyahoga County Court of Common Pleas of this Court’s jurisdiction over the state court’s case number CV-23-977128, promptly after filing this Notice of Removal. In accordance with 28 U.S.C. § 1446(d), Defendants will provide prompt written notice to Plaintiff of the filing of this Notice of Removal.

8. In accordance with 28 U.S.C. § 1446(a), the following documents from the state court are attached as exhibits to this Notice of Removal:

Exhibit 1: Plaintiff’s Complaint;

Exhibit 2: “Motion for an Order Correcting Docket Entry”;

Exhibit 3: Summons issued to Pamela McGuinea;
Exhibit 4: Summons issued to Cuyahoga County;
Exhibit 5: Return of Service of Cuyahoga County;
Exhibit 6: Cuyahoga County docket entries as of April 7, 2023.

Defendants respectfully request that this Notice effect the removal of the above-captioned case to this Court.

Respectfully submitted,

MICHAEL C. O'MALLEY, Prosecuting Attorney
of Cuyahoga County, Ohio

By: /s/ Michael J. Stewart

Michael J. Stewart (0082257)
mjstewart@prosecutor.cuyahogacounty.us
(216) 443-6673
Jake A. Elliott (0093521)
jelliott@prosecutor.cuyahogacounty.us
(216) 443-5756
CUYAHOGA COUNTY PROSECUTOR'S OFFICE
The Justice Center, Courts Tower
1200 Ontario Street, 8th Floor
Cleveland, OH 44113
Fax: (216) 443-7602

Attorneys for Defendant Cuyahoga County

CERTIFICATE OF SERVICE

I certify that on April 7, 2023, a copy of the foregoing *Notice of Removal* was filed with the Court's electronic filing system, and that I caused the foregoing *Notice of Removal* to be served via email to the following:

Brian Bardwell
Brian.bardwell@speech.law

Attorney for Plaintiff Marcellus Gilreath

/s/ Michael J. Stewart
Michael J. Stewart (0082257)



143689635

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

MARCELLUS GILREATH
Plaintiff

Case No: CV-23-977128

Judge: CASSANDRA COLLIER-WILLIAMS

PAMELA MCGUINEA, ET AL
Defendant

JOURNAL ENTRY

93 DISP. TRANSCT - FINAL

PURSUANT TO THE NOTICE OF REMOVAL (TITLE 28 U.S. CODE 1441, ET SEQ.) (FILED 04/07/2023), THE CAPTIONED CASE IS TRANSFERRED TO THE UNITED STATES DISTRICT COURT (CASE NO. 1:23-CV-720) AND THIS COURT SHALL PROCEED NO FURTHER UNLESS AND UNTIL THE CASE IS REMANDED.

SO ORDERED.

COURT COST ASSESSED TO THE PLAINTIFF(S).

PURSUANT TO CIV.R. 58(B), THE CLERK OF COURTS IS DIRECTED TO SERVE THIS JUDGMENT IN A MANNER PRESCRIBED BY CIV.R. 5(B). THE CLERK MUST INDICATE ON THE DOCKET THE NAMES AND ADDRESSES OF ALL PARTIES, THE METHOD OF SERVICE, AND THE COSTS ASSOCIATED WITH THIS SERVICE.

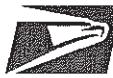
Judge Signature

04/11/2023

- 93

04/07/2023

RECEIVED FOR FILING
04/11/2023 15:51:24
NAILAH K. BYRD, CLERK

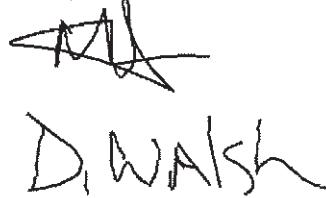


Date Produced: 04/17/2023

CERTIFIED MAIL SOLUTIONS INC.:

The following is the delivery information for Certified Mail™/RRE item number 9314 8001 1300 3548 1353 97. Our records indicate that this item was delivered on 04/14/2023 at 09:31 a.m. in CLEVELAND, OH 44113. The scanned image of the recipient information is provided below.

Signature of Recipient :


D. Walsh

Address of Recipient :

801 Superior

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,
United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.



United States District Court
Northern District of Ohio
Office of the Clerk
2-161 Carl B. Stokes United States Courthouse
801 West Superior Avenue
Cleveland, Ohio 44113-1830

Sandy Opacich (216)357-7000
Clerk of Court

May 23, 2023

Cuyahoga County
Court of Common Pleas
ATTN: Clerk of Court (Remand)
1200 Ontario Street
Cleveland, OH 44113

RECEIVED
MAY 26 2023
CLERK OF COURTS
CUYAHOGA COUNTY

RE: Remand to Cuyahoga County Court of Common Pleas
OHND Case No: 1:23cv720 Doc #6
CCCP Case No. CV-23-977128
Gilreath v. McGuinea, and Gilreath v. Cuyahoga County

Dear Clerk:

On 5/22/2023, the Honorable Judge Dan Aaron Polster, United States District Judge, ordered the above motion remanded to your court. I am enclosing certified copy of our docket sheet and the Order of Remand. Other documents in this case can be accessed electronically at: <http://ecf.ohnd.uscourts.gov>.

Please acknowledge receipt of this remand by returning a time-stamped copy of this letter in the enclosed envelope. Thank you.

Sincerely,
Sandy Opacich, Clerk

By: 
Michelle L. Fogler,
Operations Supervisor

568 John F Seiberling
Federal Building & U.S. Courthouse
2 South Main Street
Akron, OH 44308-1876
(330) 252-6000

114 James M. Ashley & Thomas W.L. Ashley
U.S. Courthouse
1716 Speilbusch Avenue
Toledo, OH 43604
(419) 213-5500

337 Thomas D. Lambros
Federal Building and US Courthouse
125 Market Street
Youngstown, OH 44503-1787
(330) 884-7400

**U.S. District Court
NORTHERN DISTRICT OF OHIO (Cleveland)
CIVIL DOCKET FOR CASE #: 1:23-cv-00720-DAP**

Gilreath v. McGuinea et al

Assigned to: Judge Dan Aaron Polster

Case in other court: Cuyahoga County Common Pleas,
CV-23-977128

Cause: 42:1983 Civil Rights Act

Date Filed: 04/07/2023

Jury Demand: Both

Nature of Suit: 550 Prisoner: Civil Rights

Jurisdiction: Federal Question

Plaintiff

Marcellus Gilreath

represented by **Brian D. Bardwell**
Speech Law
Ste. 400
1265 West 6th Street
Cleveland, OH 44113
216-236-3658
Fax: 216-578-1800
Email: efile@speech.law
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Bar Status: Active

V.

Defendant

Pamela McGuinea

represented by **Michael J. Stewart**
Office of the Prosecuting Attorney -
Cuyahoga County
8th Floor
Justice Center, Courts Tower
1200 Ontario Street
Cleveland, OH 44113
216-443-6673
Fax: 216-443-7602
Email:
mjstewart@prosecutor.cuyahogacounty.us
ATTORNEY TO BE NOTICED
Bar Status: Active

Defendant

Cuyahoga County

represented by **Jake A. Elliott**
Office of the Prosecuting Attorney -
Cuyahoga County
8th Floor
1200 Ontario Street

Cleveland, OH 441130000
 216-443-5756
 Email:
jelliott@prosecutor.cuyahogacounty.us
ATTORNEY TO BE NOTICED
Bar Status: Active

Michael J. Stewart
 (See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Active

[Email All Attorneys](#)

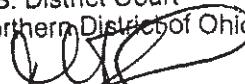
[Email All Attorneys and Additional Recipients](#)

Date Filed	#	Docket Text
04/07/2023	<u>1</u>	Notice of Removal from Cuyahoga County Common Pleas, case number CV-23-977128 with jury demand, Filing fee paid \$ 402, receipt number AOHNDC-11935739. Filed by Cuyahoga County. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> State Court Complaint, # <u>3</u> Motion for Corrected Docket Entry, # <u>4</u> Summons - McGuinea, # <u>5</u> Summons - Cuyahoga County, # <u>6</u> Return Cuyahoga County, # <u>7</u> State Court Docket). (Stewart, Michael) (Entered: 04/07/2023)
04/07/2023		Judge Dan Aaron Polster assigned to case. (L,MI) (Entered: 04/07/2023)
04/07/2023		Random Assignment of Magistrate Judge pursuant to Local Rule 3.1. In the event of a referral, case will be assigned to Magistrate Judge Jonathan D. Greenberg. (L,MI) (Entered: 04/07/2023)
04/07/2023	<u>2</u>	Magistrate Consent Form issued. (L,MI) (Entered: 04/07/2023)
04/14/2023	<u>3</u>	Certified copies of state court documents received from Cuyahoga County Court of Common Pleas, case number CV-23-977128. (H,Ch) (Entered: 04/14/2023)
04/21/2023	<u>4</u>	Notice of Consent to Removal filed by Pamela McGuinea. Related document(s) <u>1</u> .(Stewart, Michael) (Entered: 04/21/2023)
04/21/2023	<u>5</u>	Motion for extension of time until June 2, 2023 to answer filed by Cuyahoga County, Pamela McGuinea. (Stewart, Michael) (Entered: 04/21/2023)
04/21/2023		Order [non-document] granting Defendant's Motion for Extension of Time (ECF Doc. # <u>5</u>) until 12:00 pm on 6/2/23 to file an answer to Plaintiff's Complaint removed from state court (ECF Doc. # 1-2). This Court has no cognizance over the Plaintiff's Motion for Order Correcting Docket Entry (ECF Doc. #1-3), as Plaintiff filed this motion in the Court of Common Pleas before this case was removed to this Court. Entered on behalf of Judge Dan Aaron Polster on 4/21/2023. (M,CE) (Entered: 04/21/2023)
05/16/2023	<u>6</u>	Motion for Nunc Pro Tunc Order Correcting the Docket filed by Plaintiff Marcellus Gilreath. (Attachments: # <u>1</u> Affidavit of Brian D. Bardwell)(Bardwell, Brian) (Entered: 05/16/2023)
05/17/2023	<u>7</u>	Waiver of Service Returned Executed by Marcellus Gilreath. All Defendants filed on behalf of Marcellus Gilreath (Bardwell, Brian) (Entered: 05/17/2023)

05/22/2023	<u>8</u>	Order of Remand. For the reasons stated in the Order, the Court DENIES the plaintiff's Motion for <i>Nunc Pro Tunc</i> Order Correcting Docket Entry. The Court REMANDS the plaintiff's Motion to the Cuyahoga County Court of Common Pleas and respectfully requests that court to rule on the plaintiff's Motion within 45 days of this order. Related documents <u>1</u> , <u>6</u> . Signed by Judge Dan Aaron Polster on 5/22/2023. (R,AP) (Entered: 05/22/2023)
05/23/2023	<u>9</u>	Motion to clarify <i>Order of Remand</i> filed by Cuyahoga County, Pamela McGuinea. Related document(s) <u>8</u> . (Stewart, Michael) (Entered: 05/23/2023)
05/23/2023		Order [non-document]: On 5/22/2023, this case was mistakenly closed. The Court issued an order of remand (Doc. No. <u>8</u>) to the Cuyahoga County Court of Common Pleas for the limited purpose of deciding the plaintiff's Motion for <i>Nunc Pro Tunc</i> Order Correcting Docket Entry (Doc. No. <u>6</u>). Accordingly, the Court retains jurisdiction over this case and stays the proceedings until the state court rules on the plaintiff's motion (Doc. No. <u>6</u>). Entered on behalf of Judge Dan Aaron Polster on 5/23/2023. (R,AP) (Entered: 05/23/2023)

I hereby certify that this instrument is a true and correct copy of the original on file in my office.

Attest: Sandy Opacich, Clerk
U.S. District Court
Northern District of Ohio

By: 
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

MARCELLUS GILREATH,) CASE NO. 1:23-cv-00720
)
Plaintiff,) JUDGE DAN AARON POLSTER
)
v.) ORDER OF REMAND
)
PAMELA MCGUINEA, ET AL.,)
)
Defendants.)

Before the Court is the plaintiff's Motion for *Nunc Pro Tunc* Order Correcting Docket Entry ("Motion"). ECF Doc. 6. The plaintiff, Marcellus Gilreath, seeks an order backdating a state court docket entry to reflect the date he first attempted to file his complaint in state court. For the following reasons, the Court DENIES the plaintiff's Motion and REMANDS this Motion to the Cuyahoga County Court of Common Pleas.

Procedural History

This case stems from the plaintiff's alleged wrongful prosecution for theft. ECF Doc. 1-2. In 2021, the Cuyahoga County prosecutor's office moved to vacate the plaintiff's conviction. *Id.* On March 25, 2021, the state court granted the prosecutor's motion to vacate the plaintiff's conviction. *Id.* On March 27, 2023, the plaintiff filed a complaint in the Cuyahoga County Court of Common Pleas. ECF Doc. 1-2. Later that same day, the plaintiff filed a Motion for Order Correcting Docket Entry to backdate his complaint to March 24, 2023, the date he first attempted to electronically file his complaint. ECF Doc. 1-3. Before the state court could rule on the motion, the defendants, Pamela McGuinea and Cuyahoga County, removed the action to the Northern District of Ohio, on the basis of federal question. ECF Doc. 1-4.

On May 16, 2023, the plaintiff filed a Motion for *Nunc Pro Tunc* Order Correcting

Docket Entry before this Court. ECF Doc. 6. In a sworn affidavit, the plaintiff's counsel explains that a Cuyahoga County deputy clerk erroneously rejected his March 24, 2023 filing because it lacked a poverty affidavit, even though he never sought a fee waiver and actually entered his credit card information to pay the filing fee. ECF Doc. 6-1, pp. 1-2. The deputy clerk processed the plaintiff's filing on March 27, 2023 but could not change the timestamp because of "technical limitations." *Id.* at p. 2. Now, the plaintiff moves this Court to "deem[] the pleading filed as of the date it was electronically submitted" and seeks an order *nunc pro tunc* backdating the complaint to March 24, 2023. ECF Doc. 6, p. 2. The Court did not require a response from the defendants or a reply from the plaintiff before issuing this decision.

Standard of Review

The plaintiff cites to Cuyahoga County Local Rules 39.0(H)(1) and (2) as a trial court's authority to correct the docket when mistakes occur due to "technical problems." *Id.* The plaintiff asserts that "[t]he same rule applies in the federal system" and "district courts have the inherent power to correct the record *nunc pro tunc* when a clerk's office neglects to perform a ministerial act." *Id.* The Court construes the plaintiff's motion as a request under Federal Rule of Civil Procedure 60(a) to issue an order correcting a clerical mistake. As the moving party, the plaintiff bears the burden of proof.

Analysis

Rule 60(a) permits a court to "correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgement, order, or other part of the record." Fed. R. Civ. P. 60(a). Importantly, Rule 60(a) grants federal courts the authority to correct their own clerical mistakes, oversights, or omissions. *See In re Am. Precision Vibrator Co.*, 863 F.2d 428, 430 (5th Cir. 1989) ("Rule 60 derives from a long-held power of courts to grant relief from

their own judgments."); *see also Kohut v. United Healthcare Ins. Co. (In re LSC Liquidation, Inc.)*, 699 F. App'x 503, 507 (6th Cir. 2017) (ruling that modification under Rule 60(a) is "not appropriate" where "the bankruptcy court [] is not asked to correct its own error . . . but is instead asked to correct a substantive error made by the parties").

The Sixth Circuit has upheld Rule 60(a) corrections where a federal court corrects its clerical mistakes, oversights, or omissions. *See e.g. The Pruzinsky v. Gianetti (In re Walter)*, 282 F.3d 434, 440 (6th Cir. 2002) (permissible under Rule 60(a) for a bankruptcy court to modify an order where the court's own oversight in part resulted in an order that did not reflect the court's stated intent); *Pogor v. Makita U.S.A. Inc.*, 135 F.3d 384, 387-88 (6th Cir. 1998) (permissible under Rule 60(a) for a district court to add omitted prejudgment interest amount to its judgment where the court originally intended to award prejudgment interest). Accordingly, Rule 60(a) does not permit this Court to correct purported clerical mistakes that occurred when the Court of Common Pleas had jurisdiction over this case. The plaintiff does not cite any authority or cases to the contrary. Therefore, this Court lacks jurisdiction to rule on the plaintiff's motion.

Conclusion

The Court lacks jurisdiction to adjudicate the plaintiff's motion. Accordingly, the Court DENIES the plaintiff's Motion for *Nunc Pro Tunc* Order Correcting Docket Entry. The Court REMANDS the plaintiff's Motion to the Cuyahoga County Court of Common Pleas and respectfully requests that court to rule on the plaintiff's Motion within 45 days of this order.

Date: May 22, 2023

I hereby certify that this instrument is a true and correct copy of the original on file in my office.
Attest: Sandy Opachich, Clerk
U.S. District Court
Northern District of Ohio

By: _____
Deputy Clerk



/s/ Dan Aaron Polster
Dan Aaron Polster
United States District Judge

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

<p>MARCELLUS GILREATH <i>Plaintiff,</i> v. PAMELA MCGUINEA, ET AL. <i>Defendants.</i></p>	<p>Case No.: 1:23-cv-00720-DAP Judge Dan Aaron Polster Magistrate Judge Jonathan D. Greenberg</p>
<p>PLAINTIFF MARCELLUS GILREATH'S MOTION FOR NUNC PRO TUNC ORDER CORRECTING DOCKET ENTRY</p>	

Plaintiff Marcellus Gilreath respectfully moves the Court for an order correcting the docket to reflect that his Complaint was actually filed with the Cuyahoga County Clerk of Courts on March 24, 2023, rather than on March 27, 2023.

FACTS

Plaintiff Marcellus Gilreath is a disabled former doctor in the U.S. Army Medical Corps who was wrongly convicted of attempted grand theft based on his lawful application for and receipt of food stamps. Years after his conviction, prosecutors admitted their error and had his conviction vacated.

Dr. Gilreath filed a malicious-prosecution complaint on March 24, 2023, using the Cuyahoga County Clerk of Courts' e-filing system. The morning of March 27, 2023, the e-filing system rejected his filing because he had not submitted an affidavit of poverty. While Dr. Gilreath was eligible for a court-appointed attorney in his criminal case years ago, he did not need or want a fee waiver for his filing in this case. Counsel for Dr. Gilreath met with the deputy clerks on the e-filing desk the next business day to determine what had happened, and they were able to process the filing again on the spot.

However, the clerk's office said that technical limitations in its e-filing system made it impossible for them to apply the correct timestamp to the complaint, which now shows that it was filed on March 27, 2023.

LAW & ARGUMENT

I. Because the Clerk's office erroneously rejected Dr. Gilreath's complaint, the Court should deem it filed as of the date it arrived in the Clerk's office.

When technical problems delay the docketing of a pleading electronically filed in the Cuyahoga Court of Common Pleas, the trial court may enter an order deeming the pleading filed as of the date it was electronically submitted. Loc.R. 39.0(H)(1)–(2). This authority includes the authority to correct the docket to reflect the actual filing date of a complaint, as “[i]t is always preferred that cases be decided on their merits rather than on technicalities.” *Covarrubias v. Lowe's Home Improvement, L.L.C.*, 172 N.E.3d 516, ¶ 32 (8th Dist. 2021).

The same rule applies in the federal system, where district courts have the inherent power to correct the record *nunc pro tunc* when a clerk's office neglects to perform a ministerial act.

See Oates v. Oates, 866 F.2d 203, 208 (6th Cir. 1989) (“Because the court clerk failed to perform the ministerial act of entering judgment, the court should have entered judgment *nunc pro tunc*.”). “A *nunc pro tunc* order merely recites court actions previously taken but not properly or adequately recorded.” *George v. Sullivan*, 909 F.2d 857, 861 (6th Cir. 1990) (quoting *Crosby v. Mills*, 413 F.2d 1273 (10th Cir. 1969)).

For instance, in *Covarrubias*, the Plaintiff filed a complaint in a personal-injury suit on the evening of the last day before reaching his statute of limitations, but the clerk of courts—for reasons unknown—initially failed to process it or timestamp it until the next business day. Although the Plaintiff moved to correct the docket to reflect that the Complaint was filed the day prior, the Court dismissed the case on statute-of-limitations grounds, holding that Loc.R.

39.0(H)(3)(a) prohibited it from correcting the filing date to meet a “jurisdictional deadline.” The Eighth District reversed, holding that because statutes of limitations are affirmative defenses—not jurisdictional requirements—the trial court was required to correct the docket.

Given the mandate to use an e-filing system where everyone conceded “glitches have occurred,” the Eighth District said the trial court could not penalize a party who fell victim to one of those glitches.

Whether or not it was accepted by the clerk was entirely out of appellant’s counsel’s hands, and there is no assertion that there was any reason the complaint would not have been accepted. Given that appellant’s counsel had uploaded the complaint, selected the credit card to pay the filing fee, and hit “submit” prior to 5:00 p.m., which was well within the electronic filing deadline of 11:59 p.m., it was reasonable for him to assume that the filing was in the queue to be processed and that he would receive confirmation of the filing the next day.¹

The same is true here. As laid out in Exhibit A, counsel for Dr. Gilreath signed into the clerk’s e-filing portal at 9:11 p.m., entered the required information, uploaded the complaint, and hit “submit” at 9:16 p.m. At no point did the system request or require that he submit a poverty affidavit; on the contrary, it required that he enter his credit-card information to pay a filing fee, just as it has in every other case where he has not sought a fee waiver. Because the complaint was filed before 11:59 p.m. but after hours, the system did not send out a notification that the filing had been accepted or rejected. Still, something in the system triggered a rejection of the complaint for failing to attach a fee waiver that the system never requested nor required. As required by rule, counsel for Dr. Gilreath therefore ensured that the complaint was refiled the next business day. He spoke with multiple deputy clerks to sort out the error, and—after they pushed the filing through the system again—they were able to resolve the error without any

¹ Covarrubias, ¶ 27.

further effort. Because the complaint was already in the clerk's system, Dr. Gilreath's counsel was not required to upload it again, and there were therefore no changes to it whatsoever.

CONCLUSION

"[C]ases should be tried on their merits rather than the technicalities of pleadings."

Moore v. Paducah, 790 F.2d 557, 561 (6th Cir. 1986). To achieve that end here, Loc.R. 39.0 and the district court's inherent authority permits the Court to correct the docket as necessary to account for e-filing "glitches." Because doing so will permit an adjudication on the merits and would not unfairly prejudice any party, the Court should enter an order correcting the docket to reflect that Dr. Gilreath filed his complaint at 9:16 p.m. on March 24, 2023.

Respectfully submitted,

/s/Brian D. Bardwell
Speech Law LLC
Brian D. Bardwell (0098423)
1265 West Sixth Street, Suite 400
Cleveland, OH 44113-1326
216-912-2195 Phone/Fax
brian.bardwell@speech.law
Attorney for Plaintiff Marcellus Gilreath

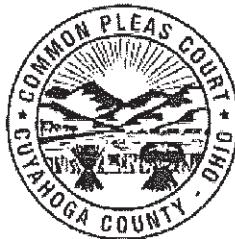
CERTIFICATE OF SERVICE

I certify that on May 16, 2023, this document was served on opposing counsel as provided by Civ. R. 5(B)(2)(c).

I hereby certify that this instrument is a true and correct copy of the original on file in my office.
Attest: Sandy Opacich, Clerk
U.S. District Court
Northern District of Ohio

By: _____
Deputy Clerk

/s/Brian D. Bardwell
Brian D. Bardwell (0098423)
Attorney for Plaintiff Marcellus Gilreath



NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
1200 Ontario Street
Cleveland, Ohio 44113

Court of Common Pleas

BRIEF IN OPPOSITION
June 1, 2023 14:11

By: MICHAEL J. STEWART 0082257

Confirmation Nbr. 2872242

MARCELLUS GIREATH

CV 23 977128

vs.

PAMELA MCGUINEA, ET AL

Judge: CASSANDRA COLLIER-WILLIAMS

Pages Filed: 5

**THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

MARCELLUS GILREATH,)	CASE NO: CV-23-977128
Plaintiff,)	
vs.)	JUDGE CASSANDRA COLLIER-
PAMELA MCGUINEA, et al.,)	WILLIAMS
Defendants.)	
)	

**DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR
NUNC PRO TUNC ORDER CORRECTING DOCKET ENTRY**

Now come Defendants Pamela McGuinea and Cuyahoga County and respectfully oppose Plaintiff Marcellus Gilreath's Motion for *Nunc Pro Tunc* Order Correcting Docket Entry, which was recently remanded from the United States District Court for the Northern District of Ohio to this Court for decision.

Gilreath's electronically filed Complaint must be deemed filed when the Clerk accepted it for filing on March 27, 2023. Gilreath is not entitled to the relief he seeks.

I. RELEVANT PROCEDURAL BACKGROUND

Gilreath's original Complaint, which contains a total of six separate causes of action, was time-stamped by the Cuyahoga County Clerk of Courts at 2:45 pm on March 27, 2023. At 7:28 pm on the same day, Gilreath filed a Motion for an Order Correcting Docket Entry requesting that the Court back-date the filing to March 24, 2023.

On April 7, 2023, Defendant Cuyahoga County removed this matter to the United States District Court for the Northern District of Ohio. On May 16, 2023, before Defendants answered or otherwise responded to the Complaint, Gilreath requested that the District Court issue a *Nunc Pro Tunc* Order back-dating the state-court Complaint to March 24, 2023. (N.D. Ohio ECF# 6). This motion was substantially similar to Gilreath's earlier state-court Motion. On May 22, 2023, the District Court concluded that it lacked jurisdiction to "correct" the filing date recognized by this Court. (N.D. Ohio ECF# 8). As a result, the District Court remanded Gilreath's *Nunc Pro Tunc* Motion to this Court for adjudication and requested that this Court rule within 45 days. (*Id.*).

The next day the District Court clarified that its order remanded only the *Nunc Pro Tunc* Motion, not the entire civil action. Defendants now respectfully oppose Gilreath's request to amend the filing date.

II. FACTS RELEVANT TO THE *NUNC PRO TUNC* MOTION.

According to Gilreath's Counsel, he utilized the Court's electronic filing system to file his Complaint. (Bardwell aff. at ¶¶ 3-4). Counsel logged onto the system after business hours on March 24, 2023. (*Id.* at ¶ 3). Counsel uploaded a copy of the Complaint, entered his credit card information and submitted the Complaint for filing at 9:16 pm. (*Id.* at ¶¶ 4-5). The Clerk's web page displayed at "Filing Confirmation" indicating that the Complaint was submitted for filing. (*Id.* at ¶ 6). The "Filing Confirmation," which is reproduced in counsel's affidavit, indicates that "[i]f the document(s) is accepted for filing, the date and time reflected above shall serve as the date and time of filing. (*Id.* at ¶ 6).

The Complaint was not accepted for filing. (*Id.* at ¶¶ 8-9). Counsel went to the Clerk's office on March 27, 2023 and learned that the filing had been rejected because "there was no

poverty affidavit attached.” (*Id.* at ¶ 10). At the Clerk’s office, Counsel reviewed his original filing and observed that the “Poverty Affidavit” option was set to “yes.” (*Id.* at ¶ 14). After two attempts, Counsel was able to successfully file the Complaint without a poverty affidavit. (*Id.* at ¶¶ 15-17). The Complaint was time-stamped by the Clerk at 2:55 pm on March 27, 2023.

III. LAW AND ARGUMENT.

Cuyahoga County Common Pleas Local Rule 39.0 governs the use of the Clerk’s electronic filing system. To the extent that Gilreath seeks to backdate his Complaint to March 24, 2023 for the purposes of any applicable statute of limitations, the result here is clear from the face of Local Rule 39.0(H)(3)(a):

Technical failures, whether the fault of the court's E-Filing system or otherwise, cannot extend jurisdictional deadlines (such as statutes of limitation or deadlines for appeal).

Moreover, in the event that a party is unable to file due to a “technical failure,” Local Rule 39.0(H)(3) contemplates two alternatives: 1) a manual paper filing (L.Rule 39.0(H)(3)(b)); and/or 2) use of the Clerk’s public terminals (39.0(H)(3)(c)). Notwithstanding that the error here was not a technical failure, Gilreath still did not attempt to avail himself of either option during normal business hours.

The Eighth District has repeatedly noted that Local Rule 39.0 properly distinguishes between the time that a document is “submitted” and when it is “accepted” for filing. The latter controls. *See, e.g., Rutti v. Dobeck*, 8th Dist. Cuyahoga No. 105634, 2017-Ohio-8737 at ¶¶ 13-16 (no relief when complaint “rejected” by the clerk’s office without explanation); *Messer v. Schneider Nat’l Carriers*, 8th Dist. Cuyahoga No. 103913, 2016-Ohio-7050 at ¶¶ 14-15 (no relief when complaint was rejected because poverty affidavit was not notarized); *Culler v. Marc*

Glassman, Inc., 8th Dist. Cuyahoga No. 101386, 2014-Ohio-5434 ¶¶ 17-19 (no relief when clerk rejected filing for lack of an electronic signature).

“[I]n accordance with Civ.R. 3(A) and 5(E), counsel bears the burden of ensuring that his or her electronically filed document was properly filed and accepted by the clerk of courts, regardless of any notice he or she may have received from the court.” *Rutti*, 2017-Ohio-8737 at ¶ 15, quoting *Culler*, 2014-Ohio-5434 at ¶ 17.

Defendants are aware of a single Eighth District opinion identified in Gilreath’s brief suggesting that relief may be proper under the unique circumstances where the clerk’s system stamped the *same* filing on the next business day without further intervention from Plaintiff or his counsel. *Cavarrubias v. Lowe’s Home Improvement, L.L.C.*, 8th Dist. Cuyahoga No. 109819, 2021-Ohio-1658 at ¶¶ 27-28. However, this Court should reject Gilreath’s reliance on *Cavarrubias* and follow *Rutti*, *Messer* and *Culler* instead for two fundamental reasons.

First, *Cavarrubias* is factually distinguishable. In *Cavarrubias*, the complaint was timestamped a day later without any real explanation and without further intervention from Plaintiff. *Cavarrubias*, 2021-Ohio-1658 at ¶ 26. However, in this case, Gilreath acknowledges that: 1) his complaint was affirmatively rejected by the clerk’s office for failure to include a poverty affidavit that was required based on the settings counsel selected when he attempted to file on March 24, 2023 (Bardwell aff. at ¶¶ 10, 12); and 2) the problem was only remedied with a new filing when counsel corrected the settings concerning the poverty affidavit. (*Id.* at ¶¶ 13-15). That is, counsel likely mistakenly indicated that Gilreath intended to file a poverty affidavit on March 24, 2023.

Second, Gilreath is essentially asking the Court to ignore the fundamental purpose of L.Rule 39.0(H), which is to place the burden for errors in late-night filing submissions on the

procrastinating party. There is no fundamental reason why Gilreath could not have filed his Complaint during normal business hours, or indeed weeks before.

IV. CONCLUSION

For the foregoing reasons, Gilreath's motion must be denied. The Complaint in this matter was filed on March 27, 2023.

Respectfully submitted,

MICHAEL C. O'MALLEY, Prosecuting Attorney of
Cuyahoga County, Ohio

By: /s/ Michael J. Stewart

Michael J. Stewart (0082257)

Jake A. Elliott (0093521)

CUYAHOGA COUNTY PROSECUTOR'S OFFICE

The Justice Center, Courts Tower

1200 Ontario Street, 8th Floor

Cleveland, OH 44113

Phone: (216) 443-5756

Fax: (216) 443-7602

mjstewart@prosecutor.cuyahogacounty.us

jelliott@prosecutor.cuyahogacounty.us

CERTIFICATE OF SERVICE

A copy of the foregoing Notice of Filing Notice of Removal was filed via the Court's electronic filing system on June 1, 2023. All parties may access this filing via the Court's electronic filing system.

By: /s/ Michael J. Stewart

Michael J. Stewart (0082257)



150743374

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

MARCELLUS GILREATH
Plaintiff

Case No: CV-23-977128

Judge: CASSANDRA COLLIER-WILLIAMS

PAMELA MCGUINEA, ET AL
Defendant

JOURNAL ENTRY

PLAINTIFF MARCELLUS GILREATH'S MOTION FOR ORDER CORRECTING DOCKET ENTRY, FILED ON 03/27/2023, IS GRANTED. PLAINTIFF'S COMPLAINT IS DEEMED FILED ON 03/24/2023.

THE CLERK OF COURTS IS HEREBY ORDERED TO SEND A COPY OF THIS ORDER TO THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF OHIO OFFICE OF THE CLERK.

SO ORDERED.

Judge Signature

06/30/2023

06/27/2023

RECEIVED FOR FILING
06/30/2023 14:00:11
NAILAH K. BYRD, CLERK

Page 1 of 1



154246688

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

MARCELLUS GILREATH
Plaintiff

PAMELA MCGUINEA, ET AL
Defendant

Case No: CV-23-977128

Judge: CASSANDRA COLLIER-WILLIAMS

JOURNAL ENTRY

04 RE-INSTATED

CAPTIONED CASE BEING REMANDED TO THE COURT OF COMMON PLEAS BY ORDER OF THE UNITED STATES DISTRICT COURT; THIS MATTER IS HEREBY RETURNED TO THE DOCKET OF JUDGE CASSANDRA COLLIER-WILLIAMS (365) FOR FURTHER PROCEEDINGS ACCORDING TO LAW.

ADMINISTRATIVE JUDGE
BRENDAN J. SHEEHAN

Judge Signature

08/06/2023

- 04
08/03/2023

RECEIVED FOR FILING
08/06/2023 20:45:09
NAILAH K. BYRD, CLERK

NAILAH K. BYRD
1200 Ontario
Cleveland, OH 44113

Case# CV23977128

RETURN RECEIPT REQUESTED ELECTRONICALLY



9314 8001 1300 3548 5999 53



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO, EASTERN
DIVISION
801 WEST SUPERIOR AVENUE
CLEVELAND OH 44113